



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

January 31, 1947

Hon. Chas. A. Tosch
County Auditor
Dallas County
Dallas, Texas

Opinion No. V-67

Re: Authority of Constable of Precinct No. 1, Dallas County, to employ more than five (5) deputies.

Dear Mr. Tosch:

Your recent request for an opinion is substantially as follows:

"Can the Constable of Precinct No. 1 of Dallas County, Texas, employ more than five deputies under present statutes?

"The applicable statutes are Articles 3902 and 6879a of the Revised Civil Statutes of the State of Texas. Precinct No. 1, according to the 1940 Federal Census, has within its confines a great portion of the City of Dallas, together with the separate cities of Highland Park and University Park. The population of these cities is as follows:

| | |
|-----------------------------------|---------|
| "City of Dallas within Precinct | |
| No. 1 | 216,921 |
| City of Highland Park | 10,288 |
| City of University Park | 14,458 |

"The Constable of Precinct No. 1 of Dallas County has heretofore been allowed five deputies on the basis of the population of the City of Dallas within the precinct being in excess of 40,000. The present constable has raised the question as to whether or not he is entitled to appoint four additional deputies, two for the City of University Park and two for the City of Highland Park, since these last two mentioned cities are separate municipalities and each has a population of more

than 8,000 and less than 40,000 and are wholly within the confines of Precinct No. 1."

We have concluded that the opinion rendered by the District Attorney of Dallas County, and enclosed with your request, is correct.

Article 3902, Vernon's Annotated Civil Statutes, provides in part as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; . . ."

Article 6879a, V.A.C.S., provides in part as follows:

"Sec. 1. The duly elected Constable in each Justice Precinct having a city or town of less than eight thousand (8,000) population according to the preceding Federal Census may appoint one (1) Deputy and no more; and each Justice Precinct having a city or town of eight thousand (8,000) and less than forty thousand (40,000) population according to the preceding Federal Census may appoint two (2) Deputies and no more; and in each Justice Precinct having

a town or city of forty thousand (40,000) population or more according to the preceding Federal Census may appoint five (5) Deputies and no more, and each and every instance said Deputy Constables shall qualify as required of Deputy Sheriffs."

An examination of the General Laws of Texas reveals that Article 6879a is an amendment to Article 3902, having been enacted May 27, 1931, by the 42nd Legislature, Chapter 280, Page 503, said amendment not affecting the provisions of Article 3902 except to provide for the number of deputies that may be appointed (State vs. Johnson, 52 S. W. 2d 110.)

In construing Article 6879a it is not believed that the Act evidences any legislative intent that the provisions of such Act be cumulative, but on the contrary, it seems that the appointment of deputies for constables is governed solely by the population of the largest town or city within such precinct.

In view of the foregoing authorities, it is the opinion of this Department that the constable of Precinct No. 1, Dallas County, Texas, is authorized to appoint five deputies, and no more, provided such appointments are in conformity with the provisions of Article 3902 and Article 6879a, Vernon's Annotated Civil Statutes of Texas. Therefore, your question should be answered in the negative.

SUMMARY

The Constable of Precinct No. 1, Dallas County, Texas, may appoint five (5) deputy constables and no more, pursuant to the provisions of Article 3902 and Article 6879a of Vernon's Annotated Civil Statutes.

Yours very truly

BW:djm:wb

ATTORNEY GENERAL OF TEXAS

APPROVED JAN 31, 1947

Price Daniel
ATTORNEY GENERAL

By

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Burnell Waldrep
Assistant

APPROVED OPINION COMMITTEE
BY F. D. CHAIRMAN